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BURGESS'S "MIDDLE PERIOD."

"There is no more serious and delicate a task in literature and morals than that of writing the history of the United States from 1806 to 1860." So read the opening lines of Dr. John W. Burgess's preface to his "Middle Period," and from them the reader has a right to expect that whether considered as literature or history the work shall show a carefulness of style and an appreciation of the significance of the events of the four decades treated, at least above the ordinary. Dr. Burgess tells us further that the task he has essayed should be approached "with an open mind and a willing spirit to see and to represent the truth." The Middle Period of our history has been not inaptly called our "Dark Ages," and everybody, from the members of the G. A. R. to the Arkansas Legislature, has been eagerly awaiting just such a history of it as Dr. Burgess declares himself anxious to write; but whoever takes up the present volume with any hopes founded upon the above quotations is likely to have them dashed by two statements which immediately follow.

The first of these, and the least important, is that the author confesses himself to be strongly biassed, and consequently to have misgivings as to his fitness for the task. The second is far more serious, for here Doctor Burgess tells us that he has used no "secondary material"—that is, that all the work already done upon the Middle Period—and surely some of it is valuable—has been ignored by him, and that he has gotten his facts at first hand and drawn from them his own (biassed) conclusions. "In a multitude of counsellors there is wisdom" is a proverb which especially obtains among scholars and critics and even among constitutional lawyers. Surely it is a bold and rash undertaking, little in keeping with the author's avowed recognition of the "serious and delicate nature of his task," to attempt it without a

study, and a careful one at that, of the work already done by others that he may profit by their successes and be warned by their failures. To start out upon an investigation with a definitely formed and distinctly announced conclusion and to disparage and ignore the labor and conclusions of others are two things not characteristic of "an open mind and a willing spirit" or even of a political historian. Leaving out of consideration all question of fairness, one may well doubt the thoroughness and the value of work done upon such lines. The man who writes history must do so in the spirit of fearless investigation. He must not fear the "twists" of any other mind native or foreign. All material should be *primary* to him. Imagine a would-be commentator on Thucydides ignoring all the editions and sitting down to his work armed only with the Cassellanus MS. with the Scholia erased, and we have the attitude of one who would write history and leave out the historians. Little good will ever come of beginning a book with the announcement that it is going to prove somebody a fool or a knave—little progress toward "national cordiality" will ever be made by attempting to demonstrate that anybody was morally wrong in '61. It is likewise calculated to produce only irritation coolly to "credit the Southern people with sincerity of purpose in their views and acts." Right or wrong a man dare not shed his blood and yield his treasure except he be sincere. No man has ever charged the Southern people with lack of courage, and it was the courage of conviction which enabled them to fight so bravely in a losing cause. The truth is *ex parte* history must always be a failure whether it be written on the right side or not, for the true historian has no side but the truth. The truth is his business, let it hurt whom it will. When he writes in the interest of any propaganda he is stepping aside from his path. He no longer deserves credit as a historian and merits consideration only as an expounder of his dogma.

So much for what Dr. Burgess tells us that he intended to do. Let us now attempt to discover what he has done.

In the first place, speaking of the work as a whole, acts of Congress do not constitute the political history of the United States during the Middle or any other period. Indeed it is especially true of the Middle Period that its history, concerned as it is with the expansion and growth of our country in both a governmental and a wider sense, cannot be at all adequately represented by a sort of telescoping together of the acts of the Legislative body. This has just been strikingly illustrated in the case of the Arbitration Treaty with Great Britain which has been rejected by the Senate. It may be safely affirmed that a majority of the American people—certainly of the best and most American—were anxious for its ratification. Clearly, then, it would not do to say that the action of the Senate voiced the sentiment of the American people. Further it would not do for the historian of fifty years hence to describe South Carolina as a region abounding in pitchforks and tobacco-juice, and Alabamians as talking even in their sleep. Politicians as a rule are not much in advance of their constituents, but they usually represent only phases, as it were, of the popular mind. Their sayings and their doings are therefore not always trustworthy indices of the popular character. Intelligent history can no longer be written without a careful study of the social, political, and economic conditions of people in the mass. So a really valuable history of the United States will not be written until some painstaking, searching mind makes itself familiar with the innermost life and the real environment of the people in every section of the country. Whoever does this will discover that at the time of which Dr. Burgess writes there were two distinct peoples in America, and that these two peoples were continually drifting apart, and becoming more and more unlike. He will not discover this by expounding acts of Congress, and indeed, he will not be able properly to expound acts of Congress until he has grasped the importance of the discovery. It will require a vast amount of "secondary material" in the shape of an intimate acquaintance with voters as well as

legislators, with natural as well as artificial conditions, to enable him to realize this fact which after all is the one fact which made the war possible. All this is true even of a political historian, because after all the politics of a country is determined by social and material conditions. Differences in these caused the North and South continually to drift apart. Thus it was that the people of these sections gradually came to regard the Constitution from different and finally opposite standpoints, and so began to develop it in diametrically opposed directions. Development somewhere was inevitable, because any constitution resembles an organism in that it is continually growing and therefore changing. It is a living thing, and it draws its life from the life of the nation. Herein lies the great fault of Doctor Burgess's book. He has no background for his acts of Congress. This background, carefully constructed out of a thorough understanding and appreciation of the characteristics of the two people, will show in clear relief how it was that the Southern people came to regard the Constitution as a compact between individual States and consequently how it was that they opposed the Northern idea of how it should be developed. In like manner it will reveal how the idea of nationality was worked out by the Northern people. It was being worked out in the Middle Period, but it was not worked out by acts of Congress, which are effects, not causes. The great legal question which was gradually dividing the country, between 1836 and 1860, was as to the nature of the Constitution. Now, as has been already indicated, constitutions are not made in a day, and the trouble arose over the direction in which the making of this one should extend. It is not therefore the business of the historian of the Middle Period to prove that the South was wrong or that the North was right, but to show clearly the trend of events leading up to the final settlement of a question of interpretation and a mode of development. This must be true, because, if we regard the Constitution as a mere formal document inflexible in its nature, the South was correct in its view of it beyond

the shadow of a doubt. What the South failed to appreciate was the force and necessity of the formative process referred to above. From 1812 to 1865 the American people were rounding out the outlined form of their Constitution. The war set the seal of final decision upon the fact that this was to be one nation, not many, but this decision had not been reached before. Owing to differences of environment, of feeling, of society, in short, of all the things that define a people, the ideas of the two sections crystalized into different shapes and could not be reconciled. The trouble with the historians, constitutional or other, who have written about the Middle Period and the war is, that while recognizing the fallacy of the strict constructionist view of the Constitution, they have fallen into the equally egregious mistake of assuming that the development of what is undoubtedly the true American idea of that Constitution had been completed by 1840 or thereabouts. Dr. Burgess has not escaped this error. Realizing, as we all must, that however the Constitution may have read or seemed to read in 1787, it would be folly and treason to read "States' Rights" into it now, he, in his preface, charges those who read it that way during the Middle Period with being wrong and foolish, when as yet the final reading had not been made. This has put him in the somewhat anomalous position of having written a book leaning decidedly toward a conclusion which he repudiates in his preface. He has done this simply because he knows, as an American citizen, that the Constitution has been read the best way in regard to State Rights and secession, while as a constitutional lawyer he realizes that up to Appomattox the Southerners had a case. The war was a part of the making of the Constitution. It was the war which decided these things to be treasonable and wrong. The North had no more right to decide the question than had the South, and since they could not agree upon a decision, war was inevitable. It is high time that those people who would tinker at the history of the causes leading up to the Civil war should realize that in this connection secession and

rebellion are incompatible. One of the component parts of a system cannot rebel against the other. It can disagree with it, quarrel with it, fight it, if you please, and be justifiable or not in doing so, but since rebellion implies resistance on the one part to lawfully-constituted authority residing altogether in the other, it would be difficult to find in the constitution or anywhere else sufficient ground for characterizing Civil war as rebellion. Anybody is entitled to write a book justifying either the North or the South, but such a book must not be labelled history. In like manner, a mass of facts, important in themselves no doubt, and having slavery and its evils coloring and even inducing most of them is not a history of the American people from 1817 to 1858. Doctor Burgess has made a collection of this sort and calls it a constitutional history. He tells us in the preface that he is going to prove the South wrong. Now it is respectfully submitted that in order to do this latter he should have written a treatise on ethics, as it is impossible to do it in a constitutional history. The book itself demonstrates this, for the author fairly labors to be just and while he always ends a discussion with the statement that the South was wrong, the discussion itself tends to lead the reader to the opposite conclusion.

But it is high time that the book were examined more in detail.

"I take up," says Dr. Burgess, in his opening chapter, "the threads of the narrative at the beginning of the year 1816, and my problem in this chapter will be to expound the acts and the policies of the fourteenth Congress." [p 1.]

This sentence is quoted because it affords us an insight into the scope and nature of the entire work—gives us its ground plan as it were—which, as already stated consists in summing up the history of the United States in acts of Congress. The particular acts treated of in the chapter are the Bank Bill, the Tariff Bill of 1816, and the Bill for Internal Improvements. Dr. Burgess expounds these to mean nationalism and calls particular attention to the attitude of Mr.

Calhoun and the other Southern members of Congress toward them. Mr. Calhoun is described as "clear, generous and patriotic," as surpassing them all in broadness of view, and in patriotic "devotion to the interests of the nation." All of this is very pleasant and very true, and it is only in regard to the causes assigned for the attitude of the great South Carolinian that we have any occasion to take issue with Doctor Burgess. He states this to be the centralizing influence of the war of 1812, just ended. But while this undoubtedly had its effect upon the whole country, a more obvious and a more weighty reason for the nationalism of the South may be found in the fact that up to this time no thought of the subservience of the states to "the Congress," as the general government was usually styled, had arisen in the mind of anybody. *Environment* had not begun to do its work and show its effects. The question between Federalist and Republican had not been so much of states and nation, as of Oligarchy and Democracy, though Jefferson had just been teaching "a careful maintenance of the rights and powers of the states." Calhoun's declaration, "The Constitution is my letter of authority" met with universal approbation. The Hartford Convention of 1814-15 had declared that the states must be the judges and execute their own decisions when the Federal Government exceeded its powers. There was no room for uneasiness in the South any more than in the North for both regarded the Constitution in very much the same way. Material interests, jealousy, and diverse social conditions had not separated the two sections of the country from each other. They were not even well defined.

In the second chapter the slavery question, which is to dominate all politics and all constitutional interpretation throughout the period, appears as a mere speck on the political horizon. The topic here is the acquisition of Florida which is described very forcibly. We cannot find it possible to agree with Dr. Burgess in regard to the expedition against the Nicholls Fort. He describes the commun-

ity as one of "pirates and buccaneers" and their suppression by General Jackson as the close of the war of 1812. Calling it war is all very well but it will hardly justify what was at best a filibustering expedition which culminated in an atrocity by which several hundred human beings were blown to atoms. It is hard to see any motive for it save the destruction of a sort of a city of refuge for runaway slaves. At the conclusion of the chapter Doctor Burgess tells us that

"It was to be expected that this territory would be erected into a commonwealth in which the institution of slavery would be legalized, but that the North did not object to this because Radical Abolitionism had not blinded its statesmen to the general and paramount interests of the Union." [p. 38.]

In other words up to this time the legality, or constitutionality of slavery was unquestioned, and nobody had attempted to force his views as to the morality of it upon anybody else.

This is shown very clearly in the next chapter which is entirely devoted to the introduction and spread of slavery in America. We are reminded of the sale of twenty negroes from a Dutch vessel at Jamestown in 1619 and are informed that,

"There is certainly no evidence that any of these parties (to the sale), or anyone else had the faintest conception that the law of any state, or any principle of natural justice or of reason was violated by the procedure or the results of the procedure." [p. 42.]

As the author goes on to say "it was a firmly and universally established opinion of the time." Slavery fell into disuse in the North not so much from moral as from material considerations, while in the South it was highly profitable. It thus grew into the social economy of the South, as this assumed coherency after the chaos of settlement and foundation, and become inextricable interwoven with the whole constitution of society. It will require something more than a knowledge of constitutional law to enable an outsider to understand the attitude of the *ante bellum* Southerner toward slavery. Its abolition was possible only with

a wrench—it had to be plucked out, it had too many roots to perish easily. On the other hand if the Northern States had not abolished slavery within their borders it would have abolished itself. The moral sense of the New Englander found a powerful spur in his pecuniary interests, and he discovered even before 1808 that slavery was wrong. In the South debit and credit worked a different result and the Southerner did not perceive the moral wrong until half a century later. Wrong it undoubtedly was, but it was always wrong and it is idle to speak of it as "a temporary necessity in the South" or anywhere else. There was profit attached to it and that is all that can be said about it.

"The Constitution of 1787 contains among its provisions three most important recognitions of slavery. . . . The first was political in its nature." "It counted the negro for three-fifths of the white man in the distribution of the representation in the House of Representatives and in the Electoral Colleges." "The second was commercial in its nature. . . . It forbade the Congress to prohibit before the year 1808 the migration and importation of such persons as the existing states might see fit to admit. . . . The third was a strict guarantee of slave property. . . . It required the surrender to his master of an escaped slave wherever found in the United States." [p. 52.]

As Doctor Burgess says, "these were momentous provisions" which secured and increased slave property and tended to make of slavery a vast political power. They made the institution perfectly legal and constitutional in any state which chose to have it. They made the slavery question not a legal one at all. It was a moral question. When diverse interests opposed each other the contending parties confounded morality and legality. The North wanted to make out slavery legally wrong because it was morally wrong, while the South sought to make it appear morally right because it was legally right. Doctor Burgess's third chapter might very well have been cut down to what is contained in the above paragraph. If he had so compressed it he would have avoided a somewhat questionable bit of reasoning which reads about as badly as an *ante bellum* Southerner's defense of the moral right of slavery. Writing of the Louisiana purchase, he says :

"The treaty of cession contained a provision which pledged "the United

States government to uphold the rights of property of the inhabitants of the province. . . . It can be fairly said therefore that the United States government obligated itself to France to maintain slavery within the territory ceded until it become a commonwealth or commonwealths of the Union."

"The United States government might have violated the treaty if it had chosen to do so and the question then raised would have been one of a purely diplomatic or international character." [p. 55.]

The discussion is concluded by the statement that :

"The government of the United States was under no obligations to any citizen of the United States or to any commonwealth of the Union to keep the treaty inviolate. . . . It may be affirmed therefore that the United States government had in the case of Louisiana for the first time permitted and maintained slavery in territory where it was perfectly free to act in regard to this subject as it would, in so far as its own citizens were concerned. [p. 57.]

This seems queer reasoning from the fact that it suggests a code of morals which makes engagements entered into by nations of no effect. It is as immoral as slavery. Besides the engagement *was* with the citizens of the United States—such citizens as under the law chose to "migrate" with their slaves into the territory and with such others as were already there.

The author next takes up the Missouri compromise which is made the subject of the fourth chapter.

"Already," he says, "had it become manifest that the influences and measures relied upon the forefathers for the ultimate extirpation of negro slavery were not effecting the desired results in the commonwealths south of the Pennsylvania line and the Ohio river." [p. 61.]

This leads us to inquire what were these "influences and measures?" They surely could not have been the "three most important recognitions of slavery" in the Constitution drawn up by these same forefathers. They could not have been found in the fact that "the United States government had permitted and maintained slavery in the territory where it was perfectly free to act in regard to this subject." They must all have been comprehended in the clause prohibiting the importation of slaves after 1808. But limitation is not extirpation by any means, and it is greatly to be doubted whether the latter ever occurred to the forefathers at least as far as the states south of the line of Penn-

sylvania and the Ohio river are concerned. The whole subject of the admission of Missouri is treated, however, in a fearless, fairminded way, and furnishes one of the most valuable chapters of the book. It is true that it can hardly be called history, but must be considered as a discussion of certain acts of Congress involving principles of political and constitutional law. As such it is indeed a valuable aid to a study of the Middle Period. It is to be regretted, however, that in a book of this sort the discussion is not brought to a definite conclusion as to the way in which the question was settled. Dr. Burgess tells us *how* it was settled and reviews in a masterly way the effects of the decision, but the great question of the constitutionality of the Missouri Compromise upon which so much came to depend and out of which grew so much that made for the destruction of the Union remains untouched. By this compromise two slave-holding commonwealths were formed out of a "province" in the whole of which

"Slavery was legal when the United States received it from France," and into, "any part of which a man might have taken slaves without violating any law. [p. 93.]

Yet slavery was forbidden in the rest of it when the commonwealths formed out of it should come up for admission to the Union.

The question, how could this action be constitutional? was asked in 1850, and to the strict constructionist seemed a perfectly reasonable one. The true answer to it would in all probability have failed to satisfy either the strict constructionist or his opponent, for it would have informed the one that he could not read his constitution except in the light of history—that this action was a part of the making of that constitution, and it would have told the other that he could not limit the making in time or extent. It would have been well to have devoted time and space to the enunciation of this principle, and the value of the chapter would have been considerably enhanced.

We are next brought to consider the "particularistic re-

action" of 1821-24, exemplified in the Tariff Bill of 1823 and the Bill for Internal Improvements in 1822. An historian, instead of a constitutional lawyer would have devoted more space to a consideration of how such a reaction from the nationalism of 1816 was possible, and less to the manner in which this reaction manifested itself. Thus the greatest defect in a valuable book would have been obviated and thus too the separation of the two peoples already alluded to as a most important element in their ultimate quarrel would have become apparent. The gradual division of the American people into particularists and nationalists, into Northern people of one type and Southerners of quite another, explains the war much more truthfully than African slavery.

The part of the chapter dealing with the Monroe Doctrine, so-called, is particularly good and some of our present legislators might study it with profit, particularly in the closing sentence which reads :

"The Congress of that day had altogether too much intelligence to make diplomatic opinions advanced by the administration either laws of the land or joint or concurrent resolutions of the legislative department of the government." [p. 128.]

The next chapter deals with the presidential election of 1824 and is the most history-like and one of the most interesting in the book. There are, however, two things in it which are somewhat peculiar. One is the meaning and the form of the sentence which characterizes John Quincy Adams, as

The best equipped and the most experienced statesman *which* America had up to that time produced. [p. 182.]

This in one sense is as bad as the information that a certain proposed movement might *lay* on the table which we found a few pages back, and in another sense furnishes a poor estimate of Washington, Jefferson and even others of Adams' predecessors. The other queer statement is found in the concluding lines of the estimate of Webster who is—"in a word,"

"A demigod; by no means so austere in character as in appearance,

liable as genius too often is to sometimes break over the restraints of customary morality, but doing it in so grand and natural a manner as to make the rule he had broken seem narrow, insignificant and mean." [p. 117.]

All of which is very fine no doubt, but by implication as low an estimate of moral law as the one above is of Washington. We may suspect that some of the great orator's acquaintances who had learned to their sorrow something of the very *natural* manner in which he broke certain moral laws did not see the grandeur of such action, and placed the *meanness* in him instead of in the moral law.

The acts of Congress treated of in the three following chapters, dealing with the Tariff, Internal Improvements and the United States Bank serve to show the birth and the growth of the Nullification idea which latter forms the basis of the next chapter. There is a general impression that the Nullification idea originated with Mr. Calhoun, and Doctor Burgess does not seek to remove that impression. It would have been well to have called attention to the fact that as far back as 1798 Jefferson had drafted resolutions to be introduced in the Kentucky Legislature declaring that the Constitution was a compact between the states, that Congress was their agent and that they might "*nullify*" those acts of Congress which were outside of the strict limits of the powers delegated to that body. Doctor Burgess has, however, split the discussion on Nullification in somewhat the same way as he split an infinitive in the passage quoted above about Webster. That is, he begins it in the eighth chapter in connection with President Jackson's message of December 7, 1830 concerning the tariff, but drops it for the Bank, to conclude it in the tenth chapter. Chronologically this may do, but it would doubtless have been better to have made the whole subject of Nullification the subject of one chapter. It would thus have been made more intelligible, and there would have been offered a better opportunity for showing how far in 1833 the people of South Carolina had yielded to their environment and taken hold on the idea that the Union was a confederation. So too might have

been shown how gradually the whole South was beginning to regard the North as hostile to it and its interests.

The chapter on Nullification closes what might be called Part I of the book—that part in which slavery is treated incidentally, and the author now takes the slavery question directly. Many writers have wasted much ink and much English both good and bad in writing screeds about “humanitarian outbursts” which represented slavery as a crime against the rights of man. Abolition was no outburst. It was a normal growth. Slavery has always been the accompaniment either of barbarism or undevelopment, and as people have progressed from the one or overcome the other they have inevitably discarded it and sought to persuade or force others to do likewise. The American people were no exception to this rule and even if there had been no war every negro in the country would have been emancipated eventually. The Northern people, dissociated with slavery by their environment, looked upon it with a repugnance which increased in direct proportion with their intelligence and their refinement. The Southern people, having it closely interwoven with their social, political, and economic life did not arrive at the emancipation point until forced up to it, but it is safe to say that they would in turn have reached it, and that they would have reached it all the sooner but for a spirit of resistance to what they considered Northern aggression, and the vituperative ravings of abolitionist fanatics. It is in connection with one of these—William Lloyd Garrison that Doctor Burgess appears in that curious attitude of stating a conclusion and arguing toward the opposite to which allusion has been made. His contempt for Garrison peeps out in spite of the fact that he disclaims all intention of referring “to him or his motives,” asserting that

“Constitutional history has only to do with the doctrines of political ethics and public jurisprudence which he formulated.” [p. 246.]

It is queer ethics and questionable jurisprudence which denounces the Constitution as,

"A covenant with death and an agreement with hell," and which seeks, [p. 248.]

"to overturn vested rights and constitutional agreements by methods which were revolutionary and almost anarchic." [p. 246.]

Fanatics like Garrison, whether Northern or Southern, fanned the smouldering jealousy and resentment of the sections into the flame of war. Doctor Burgess's preface to the contrary notwithstanding, there *was* wrong on both sides just as there was right. Abolition itself sought to violate the Constitution. The abolitionists were the first disunionists. Their action in regard to slavery can no more be justified than can secession, nor does the author of the *Middle Period* attempt to do it. His chapter on abolition ought to convince anyone that if secession was a crime the North was a party to that crime as well as the South.

Events now hasten toward the catastrophe. We are shown how President Jackson's action in regard to the suppression of the Bank, created the Whig Party which perished because its principle, the authority of Congress over the executive failed to become an accepted reading of the Constitution in that particular; how Texas became a bone of contention between slaveholding and non-slaveholding parties, and how at last by a piece of Constitutional hocus-pocus the latter triumphed and the iniquitous war with Mexico furnished more territory and consequently more fuel for the fire of animosity between the sections. It must be noted, however, that Dr. Burgess does not so denominate either the annexation of Texas or the war with Mexico. He probably regards these as he does the occupation of California which he describes as,

"A great and correct stroke of public policy supported by Geographical, Commercial and Political reasons," [p. 332.]

these latter being such as—it was valuable property, the United States wanted it, and somebody else would have taken it. These things make us wonder if the

"Only moral principle on which slavery could be justified," [p. 366.]

which we find alluded to later on in the book must not have been of the same character. But we must leave certain amendments and propositions still *laying* on or over, certain nouns preceding present participles without being in the possessive case, and even leave the state of Oregon in a state of ignorance, [p. 311], to consider the weightier matters of the "Repeal of the Missouri Compromise," the "Execution of the Fugitive Slave Law," and the struggle for Kansas which close the book. Doctor Burgess shows how the election of Pierce decided by a most overwhelming majority (27 states to 4), that the Fugitive Slave Law should be executed and then goes on to say,

"Had the slave-holders made a wise use of this to them most favorable turn in affairs, there is little question that they might have preserved their peculiar institution where it existed." [p. 377.]

By wisdom he evidently means that they should have given up the fruits of their victory; that is,

"Cease to claim the rendition of their fugitive slaves, [p. 378.]

and this for the rather absurd reason that they ought to have considered that the darkey having,

"Sufficient intelligence to elude their own police administration had already attained the point of mental activity and of courage which required in good morals his liberation." [p. 378.]

This is a test of citizenship as barbaric as slavery and as silly as can well be imagined. "Doubtless the slave-holders were sincere," or at least "it would be hard to prove they were not sincere," in believing that the "Rendition of Fugitive Slaves" was their constitutional right which had just been guaranteed to them by a vast majority of the whole people. It was very plain, however, that there was a party in the North composed of no insignificant people, (Doctor Burgess calls them "hightoned,") bent on evading the law, and, as the slaveholders took it, seeking to subvert the constitution and depriving them of their rights under it. It is not remarkable therefore that they grew to regard these people as the enemies of their very firesides and that they should have proceeded to erect as many bulwarks of defense

as possible. This it was that brought about the Repeal of the Missouri Compromise.

It is in connection with the Dred Scott case that Doctor Burgess deserts his colors as a constitutional lawyer and takes the position of a partisan as marked out in his preface. He tells us that seven of the nine Justices of the Supreme Court acquiesced in the opinion handed down by the Chief Justice, but that the opinion of the seven was wrong, and that the "powerful dissenting opinion" of the two as written by one of them "smashed the other to atoms." He tells us that,

"the nation began to show its resolution to meet its responsibility by acquitting itself of any participation in this wrong in the only manner now left to it, that is by preventing it," [p. 458.]

that it,

"did not take the nation long to decide what course it must pursue," [p. 459.]

By *Nation* he evidently means those people who repudiated the action of the Supreme Court and determined to fight slavery by all the "indirect means" possible. How can a constitutional lawyer call them a nation? There were more people on the other side and seven judges of the Supreme Court, so, legally, they had the better side. The plain truth of the matter is that the Nation was rapidly splitting into two parts, and consequently just what the Nation was and "what course it should pursue" were things not settled until the civil war. A lack of historical perspective is the only thing that makes any other view possible, unless we take a partisan position in favor of one side or the other.

Dr. Burgess has described very graphically the struggle for Kansas, and he has done so in a very impartial way. He refuses to dignify its ruffianly episodes by the name of war, and places their participants in the category of cut-throats and criminals whither the better sense of the whole American people will one day consign them. The struggle however marked the line of cleavage. When it was over

war was inevitable, and the North was arrayed against the South. Thus culminated the bickering and the strife of half a century, and Doctor Burgess leaves us on the threshold of the great civil war. Of this slavery was undoubtedly the immediate cause, but its final cause was a far different one. Doctor Burgess has made slavery the burden of his discourse because while he saw slavery behind all the political acts of the period he saw no further. He did not realize that a government partly Federal and partly National must inevitably have been developed in one direction or the other, and that slavery merely aided the Southerner to develop it toward a loose confederation while the Northerner developed it toward nationality. The civil war settled the question of the final supremacy of the Northern idea, but it did not make out the Southerner either a rebel or a rascal. It has given us a new nation. He who would write history, constitutional or congressional must realize this fact.

Dr. Gildersleeve in his edition of Pindar says of the poet ; "It was no treason to Medize before there was a Greece, and the Greece that came out of the Persian war was a very different thing from the Cantons that ranged themselves on this side and on that of a quarrel which we may be sure bore quite another aspect to those who stood aloof from it than it wears in the eyes of those who have all learned to be Hellenic patriots." It is in some such way as this that we must regard the Southerner at the close of the Middle Period. We may then find it necessary to call him mistaken—ill-advised, but we shall find no occasion to speak of him in terms of dishonor. We shall understand that his consciousness of being right was as great as that of the Northerner, and that his contention in regard to the Constitution was *a priori* as reasonable as the latter's. We shall not then be so ready to call him traitor, nor shall we find it so hard to realize that his "lost cause" meant far more to him than the mere possession of his slaves.

W. H. McKELLAR.